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cital that they are issued for "—— magisterial district," but that the full credit of the county is pledged for their payment, and that a tax will be levied upon the property of the district to pay interest and create a sinking fund. Section 7 requires a levy by the county on all property liable to state tax in the magisterial district in which the proceeds of the bonds are to be expended, and that, should the county have to assume any payment, the board of supervisors shall levy such tax in the magisterial district as may be necessary to pay the amount so assumed; "it being \* \* \* intended that bonds issued or to be issued under this act are county obligations, but payable primarily out of levies upon the property in the magisterial district, where the proceeds of the bonds may be expended hereunder." Held, that the bonds were direct county bonds, and not bonds of the magisterial district; the county's liability to the bondholder not being diminished because of the provision for levy upon the property of the district.

[Ed. Note.—For other cases, see Counties, Cent. Dig. §§ 293-295; Dec. Dig. § 187.\* 10 Va.-W. Va. Enc. Dig. 285. 12 Va.-W. Va. Enc. Dig. 880.]

Error to Circuit Court, Tazewell County.

Action by the County of Tazewell against C. J. Moss. Judgment for plaintiff, and defendant brings error. Affirmed.

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STONEGA COKE & COAL CO. *v.* ADDINGTON.

Nov. 16, 1911. Rehearing denied Jan. 18, 1912.

[73 S. E. 257.]

**1. Damages (§ 62\*)—Contracts—Measure of Damages.**—Where an owner of coal mines, who employed a contractor to drive entries into the mines, to do all the temporary timbering, and to remove the slate and refuse in the entries, etc., failed to furnish, as required by the contract, pumps, pipes, and wrenches, which could be purchased for a very small sum, the contractor was required to purchase the same, and where he failed to do so he could not recover the value of any labor done by reason of the owner's failure to furnish the articles, since the rule that a party cannot recover for avoidable consequences is applicable to contracts, as well as torts.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 124-131; Dec. Dig. § 62.\* 4 Va.-W. Va. Enc. Dig. 183, 212.]

**2. Mines and Minerals (§ 109\*)—Contracts—Breach—Waiver.**—An owner of a coal mine, employing a contractor to drive entries into the mine, failed to furnish the contractor pumps, pipes, and wrenches for pumping the water out of the mine, as required by the contract.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

The contractor continued to work for several months after such failure, and informed the owner that he would bail the water out. Held, that the contractor waived his rights under the contract, especially where he could have furnished the articles at a trifling cost.

[Ed. Note.—For other cases, see Mines and Minerals, Dec. Dig. § 109.\* 4 Va.-W. Va. Enc. Dig. 212.]

**3. Appeal and Error (§ 843\*)—Questions Reviewable.**—The Supreme Court of Appeals, reversing a case for errors in instructions, will not consider the motion to set aside the verdict as contrary to the evidence.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3331-3341; Dec. Dig. § 843.\* 1 Va.-W. Va. Enc. Dig. 600.]

Error to Circuit Court, Wise County.

Action by C. M. Addington against the Stonega Coke & Coal Company. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded for new trial.

*Bullitt & Chalkley*, for plaintiff in error.

*Bond & Bruce*, for defendant in error.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.